

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

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IN THE MATTER OF: )  
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**City of Marion** )  
**Henry Street UAD** )  
**Marion, Perry County, Alabama** )  
\_\_\_\_\_ )

Order No. 21 -XXX -SW

**FINDINGS**

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management’s (hereinafter “ADEM” or “the Department”) Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, the Department makes the following FINDINGS:

1. The City of Marion is the owner of real property located on Henry Street in Marion, Perry County, Alabama (Parcel 53-13-06-24-0-004-044.002) (hereinafter “the Site”), and is responsible for the creation of an unauthorized solid waste dump (hereinafter “UAD”) at the Site, which is the subject of this Administrative Order.
2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Department is a duly constituted department of the State of Alabama.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.
4. Pursuant to Ala. Code § 22-27-10(b), as amended, and ADEM Admin. Code r. 335-13-11-.03(2), any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump,

the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump.

5. On February 26, 2019, pursuant to a complaint, Department personnel conducted an initial site inspection of the Site and observed the presence of a UAD. A review of Perry County property records revealed the City of Marion as the owner of the aforementioned Site. At the time of inspection, the City of Marion was operating a maintenance facility on the Site. The inspection and a review of the City of Marion's compliance with certain requirements of Division 13 of the ADEM Admin. Code revealed the following:

Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2), unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

On February 26, 2019, Department personnel observed approximately 1,800 cubic yards of household waste, construction/ demolition waste, rubbish, and shingles disposed at the Site without a permit from the Department, thereby constituting the creation of a UAD. The Department has determined that the City of Marion is responsible for the UAD.

6. On March 18, 2019, the Department issued to the City of Marion a Notice of Violation (hereinafter "NOV") requiring the abatement and closure of the UAD.

7. The City of Marion did not submit to the Department documentary evidence that all regulated solid waste had been removed from the Site and disposed in a permitted landfill as required in the NOV.

8. On October 1, 2019, Department personnel conducted a follow-up inspection of the Site and observed that the volume of the solid waste had been reduced. At the time of the inspection the UAD consisted of approximately 640 cubic yards of construction/ demolition waste and household waste.

9. On March 25, 2020, Department personnel conducted a third inspection of the Site and observed the continued existence of the UAD. In the intervening period

between the October 1, 2019 inspection and the March 25, 2020 inspection, there was no readily discernible evidence that any further remedial action had been taken to abate the UAD.

10. On July 23, 2020, Department personnel conducted a fourth inspection of the Site and observed the continued existence of the UAD. Department personnel noted that approximately 50 cubic yards of household waste and rubbish had been added to the UAD since the March 25, 2020 inspection.

11. On March 4, 2021, Department personnel conducted an inspection of the Site and observed the continued existence of a UAD. During the inspection, a reduction of previously noted regulated solid waste was observed; however, approximately 280 cubic yards of burnt solid waste, 40 cubic yards of scrap metal, and miscellaneous wastes, and 25 scrap tires was still present at the Site. In addition, approximately 120 cubic yards of discarded waste collection bins were observed along the wood line behind the maintenance shop.

12. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The creation, contribution to, or operation of a UAD is a public nuisance per se and a menace to public health. With

regards to the UAD located on the Site, the Department is unaware of any irreparable harm to the environment, or any immediate threat to human health or to the safety of the public as a result of this violation.

B. THE STANDARD OF CARE: The City of Marion failed to abide by requirements applicable to the disposal of solid wastes and failed to comply with directives from the Department regarding the proper abatement and closure of the UAD.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the City of Marion has realized a significant economic benefit as a result of the violation cited herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by the City of Marion to mitigate any potential effects upon the environment and human health that may have been caused as a result of the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, the City of Marion does not have a documented history of violations of the applicable requirements of Division 13 of the ADEM Admin. Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating The City of Marion is unable to pay the civil penalty.

13. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violation cited herein (see Attachment A, which is made a part of the Department's FINDINGS).

### **ORDER**

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, the City of Marion shall pay to the Department a civil penalty in the amount of \$17,000 for the violation cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

All payments shall reference the City of Marion's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon issuance of this Order and continuing each and every day thereafter, the City of Marion shall cease and desist from creating or operating any UADs.

C. That, within thirty days of issuance of this Order, the City of Marion shall commence and complete closure of the UAD on the Site in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)1. The City of Marion shall remove and properly dispose all solid waste materials into a permitted landfill unit and comply with all applicable requirements of Division 335-13 of the ADEM Admin. Code.

D. That, within fifteen days of completion of all remediation activities, the City of Marion shall document closure activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of waste removed from the Site.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the Site.

4. A copy of waste receipts documenting that all regulated solid waste was taken to a permitted landfill.
5. Photographs of the Site, before and after remediation.
6. Documentation that the Site was properly closed to prevent erosion.
7. Documentation that the Site has been secured to prevent any future illegal dumping.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

F. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the City of Marion for the violation cited herein.

G. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the City of Marion for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2021.

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Lance R. LeFleur  
Director

**Attachment A**

City of Marion  
Henry Street Unauthorized Solid Waste Dump  
Marion, Perry County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation and operation of an Unauthorized Dump	1	\$12,000	\$5,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$12,000	\$5,000	\$0	\$17,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
	\$0

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$17,000
Total Adjustments (+/-)	\$0
<b>FINAL PENALTY</b>	<b>\$17,000</b>

Footnotes

\* See the "Findings" portion of the Order for a detailed description of each violation and the penalty factors.